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January 24, 2008

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
236 Massachusetts Avenue, NE  
Suite 110  
Washington, D.C. 20002

**FILED/ACCEPTED**

**JAN 24 2008**

Federal Communications Commission  
Office of the Secretary

RE: Supplement to Answers to Request for Admissions, Avatar Enterprises, Inc.; EB Docket No. 07-197

Dear Madame Secretary:

Enclosed for filing on behalf of Avatar Enterprises, Inc., is the original and 6 copies of the Supplement to Answers to the Enforcement Bureau's Request for Admission of Facts and Genuineness of Documents to Avatar Enterprises, Inc., in the above-referenced matter.

Sincerely,

*Catherine Park, Esq.*

Catherine Park, Esq.

Enclosures: Original + 6 Copies

No. of Copies rec'd  
List ABCDE

*OTC*

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )

Kurtis J. Kintzel, Keanan Kintzel, and all )  
Entities by which they do business before the )  
Federal Communications Commission )

Resellers of Telecommunications Services )

To: Presiding Officer, Richard L. Sippel )  
(Chief ALJ) )

EB Docket No. 07-197

**FILED/ACCEPTED**

**JAN 24 2008**

Federal Communications Commission  
Office of the Secretary

**SUPPLEMENT TO ANSWERS TO ENFORCEMENT BUREAU'S REQUEST FOR  
ADMISSION OF FACTS AND GENUINENESS OF DOCUMENTS TO AVATAR**

**ENTERPRISES, INC.**

The party, through his undersigned counsel, hereby submits this supplement to the Answers to the Request for Admission of Facts and Genuineness of Documents to Avatar Enterprises, Inc., originally filed on November 14, 2007, as follows:

- a. The information supplied in these Answers is true to the best of the party's knowledge, information, and belief;
- b. The word usage and sentence structure may be those of the attorney who in fact prepared these Answers and does not purport to be that of the executing party; and
- c. Discovery is not complete; the party reserves the right to supplement its Answers if additional information comes to its attention.

**General Objections**

The party renews all objections contained in the original Answers to the Request for Admissions and Genuineness of Documents to Avatar Enterprises, Inc., which was filed on November 14, 2007. Nothing in this supplement is intended to be and shall not be construed to be a waiver of the applicability of these general objections which are incorporated by reference into each Answer contained in this supplement.

### Answers

1. "Avatar is bound by a consent decree between the Commission and BOI dated on or about February 13, 2004 (the "Consent Decree") in connection with a proceeding under EB Docket No. 03-85."

Answer: Objection; the question whether "Avatar" is bound by the Consent Decree is either purely a matter of law, thus not an appropriate subject of a Request for Admission, or presents a genuine, disputed issue for trial, thus is denied on that ground. The party also objects to the definition of "Avatar" provided by the Bureau, because the definition is overbroad, encompassing companies and entities clearly outside the reasonable range of a question purportedly directed to Avatar Enterprises, Inc. An overbroad definition violates the due process rights of all the entities, as it would seek to bind entities together that may have nothing to do with each other and/or with the instant proceeding, and permit findings of liability against all if liability is found against even one. The Enforcement Bureau's own attorneys drafted the Consent Decree. The Consent Decree, by its terms, is entered into between the Commission and Business Options, Inc. The Consent Decree was negotiated and drafted for the purpose of ending a proceeding against Business Options, Inc. However, the Consent Decree purports to bring within its ambit several other companies owned by the Kintzels, despite the fact that those companies were not under investigation. Thus, there is a genuine, disputed issue for trial

whether the Bureau/Commission acted within its authority to attempt to bind the other companies into the Consent Decree, the first paragraph of which states in no uncertain terms that the Consent Decree is entered into only between the Commission and Business Options, Inc. If the Bureau is seeking reformation of the Consent Decree to include the other companies in the first paragraph, reformation must be denied under the doctrines of contributory negligence, estoppel, waiver, and/or failure to mitigate damages. Reformation is an equitable remedy that will be denied if the party seeking reformation failed to exercise a positive duty (such as diligence in drafting) in the first instance. The Bureau's own attorneys drafted the Consent Decree. Thus the Bureau had every opportunity to correct any purported drafting errors. Rather, such drafting "errors" are more likely indicative of a serious flaw in the negotiation and drafting of the Consent Decree—the Bureau's/Commission's attempt to bind such other companies, to end a proceeding against a single company. Whether the Bureau/Commission exceeded its authority in doing so presents a genuine, disputed issue for trial.

2. "Kurtis J. Kintzel is a director of Avatar."

Answer: Admitted, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to Request No. 1.

3. "Kurtis J. Kintzel has been a director of Avatar during the period February 11, 2004 through the present."

Answer: Admitted, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to Request No. 1.

4. "Kurtis J. Kintzel holds a 72 percent equity interest in Avatar."

Answer: Admitted, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to Request No. 1.

5. "Kurtis J. Kintzel has held a majority equity interest in Avatar from February 11, 2004 through the present."

Answer: Admitted, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to Request No. 1.

6. "Keanan Kintzel is a director of Avatar."

Answer: Admitted, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to question 1.

7. "Keanan Kintzel has been a director of Avatar during the period February 11, 2004 through the present."

Answer: Admitted, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to Request No. 1.

8. "Keanan Kintzel holds a 26 percent equity interest in Avatar."

Answer: Admitted, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to Request No. 1.

9. "Keanan Kintzel has held a minority equity interest in Avatar from February 11, 2004 through the present."

Answer: Admitted, with respect to Avatar Enterprises, Inc. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to Request No. 1.

10. "Avatar was an affiliate of BOI during the period February 11, 2004 through the present."

Answer: Objection; the request is vague and/or misleading, as the term "affiliate" is not defined in the Request for Admission. The Presiding Officer's Order of January 3, 2008, suggests that the the Requests should be answered by adopting the definitions contained in the Consent Decree. *See* FCC 08M-01, p. 4. The party heretofore submits that the definitions contained in the instant Request for Admissions are far broader than those contained in the Consent Decree. The Consent Decree's definition of "affiliates" is narrowly confined to those companies owned or controlled by the Kintzels *that provide or market long-distance telephone service*. The Consent Decree defines "Avatar" separately, in an overbroad manner that could potentially encompass all other companies that the Kintzels own or control within their lifetimes, even where such companies have no involvement with the telecommunications market. The party contends that the FCC lacks authority to insist upon such an overbroad definition, which would permit the FCC to exceed its federal mandate, and permit the FCC unrestricted access to revenues that are not even attributable to the telecommunications market. It is beyond argument that the FCC has no authority to impose a disability and/or restraint upon the rights of the Kintzels to participate in segments of the market economy that are not regulated by the FCC. Where the Kintzels form companies in markets that are not regulated by the FCC, and manage revenues for those companies through Avatar Enterprises, Inc., the FCC has no jurisdiction over such revenues or over Avatar Enterprises, Inc., to that extent. As explained in the foregoing, the

question whether "Avatar" was an affiliate of "BOI" presents a genuine, disputed issue for trial, and is denied on that ground. The party also objects to the definitions of "BOI" and "Avatar" provided by the Bureau, for the same reasons stated in the Answer to Request No. 1 with respect to the definition of "Avatar." Notwithstanding the foregoing, and without waiving any objections, the party states as follows: Admitted that, during the period February 11, 2004 through the present, Kurtis J. Kintzel was 72 percent owner of Avatar Enterprises, Inc., and 72 percent owner of Business Options, Inc. Any other part, factual assertion, implication or inference relating to the request is denied.

11. "Avatar was an affiliate of Buzz during the period February 11, 2004 through the present."

Answer: Objection; the request is vague and/or misleading, as the term "affiliate" is not defined in the Request for Admission. The Presiding Officer's Order of January 3, 2008, suggests that the the Requests should be answered by adopting the definitions contained in the Consent Decree. *See* FCC 08M-01, p. 4. The party heretofore submits that the definitions contained in the instant Request for Admissions are far broader than those contained in the Consent Decree. The Consent Decree's definition of "affiliates" is narrowly confined to those companies owned or controlled by the Kintzels *that provide or market long-distance telephone service*. The Consent Decree defines "Avatar" separately, in an overbroad manner that could potentially encompass all other companies that the Kintzels own or control within their lifetimes, even where such companies have no involvement with the telecommunications business. The party contends that the FCC lacks authority to insist upon such an overbroad definition, which would permit the FCC to exceed its federal mandate, and permit the FCC unrestricted access to revenues that are not even attributable to the telecommunications market. It is beyond argument

*that the FCC has no authority to impose a disability and/or restraint upon the rights of the* Kintzels to participate in segments of the market economy that are not regulated by the FCC. Where the Kintzels form companies in markets that are not regulated by the FCC, and manage revenues for those companies through Avatar Enterprises, Inc., the FCC has no jurisdiction over such revenues or over Avatar Enterprises, Inc., to that extent. As explained in the foregoing, the question whether "Avatar" was an affiliate of "Buzz" presents a genuine, disputed issue for trial, and is denied on that ground. The party also objects to the definitions of "Buzz" and "Avatar" provided by the Bureau, for the same reasons stated in the Answer to Request No. 1 with respect to the definition of "Avatar." Notwithstanding the foregoing, and without waiving any objections, the party states as follows: Admitted that, during the period February 11, 2004 through the present, Kurtis J. Kintzel was 72 percent owner of Avatar Enterprises, Inc., and 72 percent owner of Buzz Telecom Corp. Any other part, factual assertion, implication or inference relating to the request is denied.

12. "Avatar was an affiliate of US Bell during the period February 11, 2004 through the present."

Answer: Denied that Avatar Enterprises, Inc., was an affiliate of U.S. Bell, Inc./Link Technologies Corp. during the period February 11, 2004 through the present. U.S. Bell/Link Technologies Corp. was already dissolved as a corporate entity during the period February 11, 2004 through the present.

13. "Avatar, BOI, Buzz, US Bell and Link Technologies have been affiliates during the period February 11, 2004 through the present."

Answer: Objection; the request is vague and/or misleading, as the term "affiliate" is not defined in the Request for Admission. The Presiding Officer's Order of January 3, 2008,



suggests that the the Requests should be answered by adopting the definitions contained in the Consent Decree. See FCC 08M-01, p. 4. The party heretofore submits that the definitions contained in the instant Request for Admissions are far broader than those contained in the Consent Decree. The Consent Decree's definition of "affiliates" is narrowly confined to those companies owned or controlled by the Kintzels *that provide or market long-distance telephone service*. The Consent Decree defines "Avatar" separately, in an overbroad manner that could potentially encompass all other companies that the Kintzels own or control within their lifetimes, even where such companies have no involvement with the telecommunications business. The party contends that the FCC lacks authority to insist upon such an overbroad definition, which would permit the FCC to exceed its federal mandate, and permit the FCC unrestricted access to revenues that are not even attributable to the telecommunications market. It is beyond argument that the FCC has no authority to impose a disability and/or restraint upon the rights of the Kintzels to participate in segments of the market economy that are not regulated by the FCC. Where the Kintzels form companies in markets that are not regulated by the FCC, and manage revenues for those companies through Avatar Enterprises, Inc., the FCC has no jurisdiction over such revenues or over Avatar Enterprises, Inc., to that extent. The party also objects to the definitions of "BOI," "Buzz," "US Bell," "Link Technologies," and "Avatar" provided by the Bureau, for the same reasons stated in the Answer to Request No. 1 with respect to the definition of "Avatar." Notwithstanding the foregoing, and without waiving any objections, the party states as follows: U.S. Bell, Inc./Link Technologies Corp. was already dissolved as a corporate entity during the period February 11, 2004 through the present, thus could not have been any company's affiliate. During the period February 11, 2004 through the present, Kurtis J. Kintzel has been 72 percent owner of Avatar Enterprises, Inc.; Buzz Telecom Corp.; and Business

Options, Inc. Any other part, factual assertion, implication or inference relating to the request is denied.

14. "Avatar has not made all monthly payments toward the voluntary contribution due under the terms of the Consent Decree."

Answer: Objection; the question is compound and/or misleading. Whether Avatar Enterprises, Inc., is even liable for the voluntary contribution presents a genuine, disputed issue for trial, and is denied on that ground. The party objects to the definition of "Avatar" provided by the Bureau, as stated in the Answer to Request No. 1.

15. "The Companies have not made all monthly payments toward the voluntary contribution due under the terms of the Consent Decree."

Answer: Objection; the question is compound and/or misleading. Whether the "Companies" are even liable for the voluntary contribution presents a genuine, disputed issue for trial, and is denied on that ground. The party objects to the definition of "Companies" provided by the Bureau, for the same reasons stated in the Answer to Request No. 1 with respect to the definition of "Avatar." Notwithstanding the foregoing, and without waiving any objections, the party states as follows: The purposes of requests for admissions are, in general, to eliminate issues not in controversy, and to narrow issues that are in controversy. The party admits that Business Options, Inc., is bound by the Consent Decree, and liable for the voluntary contribution to that extent. The number and timing of payments that were made or not made, however, is unknown at this time, because discovery of such information has become unduly burdensome and expensive, due to the slowdown in the business cycle and resulting inability of the party to obtain funds to pay for such discovery. For the foregoing reasons, the party can neither admit nor deny, at this time, whether specific payments were made.

16. "Avatar failed to make the payment toward the \$510,000 voluntary contribution that was due in June 2005."

Answer: Objection; the question is compound and/or misleading. Whether Avatar Enterprises, Inc., is even liable for the voluntary contribution presents a genuine, disputed issue for trial, and is denied on that ground. The party objects to the definition of "Avatar" provided by the Bureau, as stated in the Answer to Request No. 1.

17. "The Companies failed to make the payment toward the \$510,000 voluntary contribution that was due in June 2005."

Answer: Objection; the question is compound and/or misleading. Whether the "Companies" are even liable for the voluntary contribution presents a genuine, disputed issue for trial, and is denied on that ground. The party objects to the definition of "Companies" provided by the Bureau, for the same reasons stated in the Answer to Request No. 1 with respect to the definition of "Avatar." Notwithstanding the foregoing, and without waiving any objections, the party states as follows: The purposes of requests for admissions are, in general, to eliminate issues not in controversy, and to narrow issues that are in controversy. The party admits that Business Options, Inc., is bound by the Consent Decree, and liable for the voluntary contribution to that extent. The number and timing of payments that were made or not made, however, is unknown at this time, because discovery of such information has become unduly burdensome and expensive, due to the slowdown in the business cycle and resulting inability of the party to obtain funds to pay for such discovery. For the foregoing reasons, the party can neither admit nor deny, at this time, whether specific payments were made.

18. "Avatar failed to make the payments toward the \$510,000 voluntary contribution that was due in each of August 2005 through April 2006."

Answer: Objection; the question is incomprehensible. The party objects to the definition of "Avatar" provided by the Bureau, as stated in the Answer to Request No. 1.

19. "The Companies failed to make the payments toward the \$510,000 voluntary contribution that was due in each of August 2005 through April 2006."

Answer: Objection; the question is incomprehensible. The party objects to the definition of "Avatar" provided by the Bureau, as stated in the Answer to Request No. 1.

20. "Avatar has made no payments toward the \$510,000 voluntary contribution since its May 2006 installment payment."

Answer: Objection; the question is compound and/or misleading. Whether Avatar Enterprises, Inc., is even liable for the voluntary contribution presents a genuine, disputed issue for trial, and is denied on that ground. The party objects to the definition of "Avatar" provided by the Bureau, as stated in the Answer to Request No. 1.

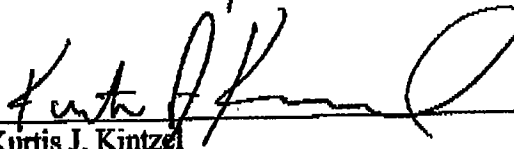
21. "The Companies have made no payments toward the \$510,000 voluntary contribution since the May 2006 installment payment."

Answer: Objection; the question is compound and/or misleading. Whether the "Companies" are even liable for the voluntary contribution presents a genuine, disputed issue for trial, and is denied on that ground. The party objects to the definition of "Companies" provided by the Bureau, for the same reasons stated in the Answer to Request No. 1 with respect to the definition of "Avatar." Notwithstanding the foregoing, and without waiving any objections, the party states as follows: The purposes of requests for admissions are, in general, to eliminate issues not in controversy, and to narrow issues that are in controversy. The party admits that Business Options, Inc., is bound by the Consent Decree, and liable for the voluntary contribution to that extent. The number and timing of payments that were made or not made, however, is

unknown at this time, because discovery of such information has become unduly burdensome and expensive, due to the slowdown in the business cycle and resulting inability of the party to obtain funds to pay for such discovery. For the foregoing reasons, the party can neither admit nor deny, at this time, whether specific payments were made.

### SWORN STATEMENT

I hereby declare under penalty of perjury that the information supplied in the foregoing Answers is true to the best of my knowledge, information, and belief. The word choice and sentence structure may be those of the attorney and does not purport to be that of the executing party. Discovery is not complete; the party reserves the right to supplement its Answers if additional information comes to its attention. Executed on January 23, 2008.

  
Kurtis J. Kintzel  
Director, Avatar Enterprises, Inc.

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**Certificate of Service**

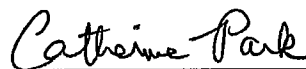
I HEREBY CERTIFY that a true and correct copy of the foregoing was sent for filing on this 24<sup>th</sup> day of January 2008, by hand delivery, to the following:

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
236 Massachusetts Avenue, NE  
Suite 110  
Washington, D.C. 20002

And served by U.S. Mail, First Class, on the following:

Richard L. Sippel, Chief Administrative Law Judge  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 1-C861  
Washington, D.C. 20554

Hillary DeNigro, Chief  
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Catherine Park